UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Felicia Burch, Scott Bloom, Matthew Burch, Jeffrey Ehlenz, Carol Gabriele, Nicole Graham, Jeffrey Kosek, Karen Zeeb, David Howard, Colleen Kist, Ronald Schneberger and Gena Margason, on behalf of themselves and other individuals similarly situated,

Plaintiffs,

v.

Qwest Corporation,

Defendant.

No. 06-CV-3523-MJD/AJB

Darcy Jones and Paul Larsen, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

Qwest Communications International Inc., a Delaware corporation, Qwest Communications Corporation, a Colorado corporation, and Qwest Corporation, a Delaware corporation,

Defendants.

No. 07-CV-2979-MJD/AJB

MEMORANDUM IN SUPPORT OF JOINT MOTION FOR FINAL APPROVAL OF THE SETTLEMENT

Plaintiffs[1] and the Qwest Defendants ("Qwest") in the above-captioned lawsuits[2] (*Burch v. Qwest Corporation et al.*, No. 06-CV-3523-MJD/AJB ("*Burch*") and *Jones v. Qwest Corporation et. al.*, No. 07-CV-2979-MJD/AJB) ("*Jones*") (collectively, "the Parties") reached a proposed settlement, which was preliminarily approved by the Court on June 6, 2012. (ECF No. 506.) The proposed settlement secures for class members significant monetary compensation for their claims and has been well-received by the class members—there were **no** objections and only three opt-outs. The settlement is fair, reasonable, and adequate and, accordingly, should be finally approved for distribution.[3]

FACTUAL BACKGROUND

I. PROCEDURAL POSTURE AND CASE HISTORY

In light of the Parties' extensive prior briefing in support of the Joint Motion for Preliminary Approval, the Parties will provide a brief summary here.[4]

The *Burch* case involves claims that the Qwest Defendants ("Qwest") did not pay certain wages allegedly due to Sales Consultant and Sales and Service Consultants (collectively, "Consultants") under the federal Fair Labor Standards Act ("FLSA") and

[1] The Settlement Agreement includes the Plaintiffs in both *Burch* and *Jones*.

[2] The "Qwest Defendants" in the *Jones* and *Burch* lawsuits were Qwest Corporation d/b/a CenturyLink QC ("Qwest Corporation"), Qwest Communications Company LLC d/b/a CenturyLink QCC, f/k/a Qwest Communications Corporation ("QCC"), and Qwest Communications International Inc. ("QCII"). QCC and QCII have been dismissed from the *Burch* lawsuit. (ECF No. 437.)

[3] Contemporaneously with this Memorandum, Class Counsel has filed a separate motion for attorneys' fees, costs, and Plaintiff service payment. Qwest does not oppose such motion.

[4] The Parties hereby incorporate by reference the "Procedural and Factual History" set forth in their preliminary approval papers (ECF No. 497 at 3-14.)

Minnesota, Colorado, Oregon and Washington state laws. (Compl., ECF No. 1; Amended Compl., ECF No. 64; Second Amended Compl., ECF No. 244.) The Court certified a collective action under the FLSA and state class actions under Minnesota, Colorado, Oregon and Washington state law for unpaid overtime claims associated with logging onto and off of computer programs at the beginning and end of work shifts. (Dec. 16, 2009 Order, ECF No. 352.) The *Jones* case includes claims similar to those in *Burch*, and the Court consolidated the two cases for the purposes of settlement. (Preliminary Approval Order, ECF No. 506 at 4.)

This matter has been extensively litigated since it was filed in 2006. After over five years of litigation, the Parties have engaged in two rounds of substantial discovery and extensive motion practice. The Parties exchanged hundreds of thousands of documents. (Desai Decl. at ¶ 3.) Qwest deposed 40 Plaintiffs in *Burch* and two Plaintiffs in *Jones*, and Plaintiffs took 15 depositions and a 30(b)(6) deposition with 21 designated witnesses. (*Id.*) Further, the Parties filed several motions in this case, some of which were pending at the time the Parties reached a tentative settlement, such as Qwest's and Plaintiffs' motions for partial summary judgment, (ECF Nos. 443-451), Qwest's motion for decertification of the Rule 23 classes and FLSA collective, (ECF Nos. 455-458), and Plaintiffs' motion to consolidate this case with the related *Jones* case for trial purposes. (ECF No. 478-482.)

After three formal mediation sessions during the course of the lawsuit, the last of which was facilitated by Magistrate Judge Boylan, the Parties reached a tentative settlement, executing a Settlement Term Sheet on October 25, 2011 and a comprehensive Settlement Agreement on April 25, 2012. (Unredacted Settlement Term Sheet, ECF No. 498-1, Exhibit 1 (filed under seal); Unredacted Settlement Agreement, *id.*, Exhibit 2 (filed under seal); Redacted Settlement Agreement, ECF No. 507.) The Parties filed their Joint Motion for Preliminary Approval of the Settlement on May 21, 2012, which the Court granted on June 6, 2012. (ECF No. 506.)

II. SETTLEMENT ALLOCATION

The "Total Settlement Fund" is the maximum payment obligation of the Qwest Defendants. (*Id.* at Section II.A.45.) The amount of the Settlement is set forth in Section II.A.45 (page 17) of the Settlement Agreement. The Total Settlement Fund fully resolves all claims for all wages, liquidated damages, interest, and attorneys' fees and costs, including settlement administration costs, to which Plaintiffs and all their counsel claim or could have claimed entitlement in or as a result of the Litigation or any associated activity or undertaking. (*Id.*)

Each individual's settlement amount was calculated by Class Counsel according to a formula which is based on a week-by-week analysis of (1) overtime allegedly due using a uniform assumption of unpaid daily overtime for each Plaintiff, (2) available payroll data, and (3) dates of employment during the relevant time periods. (Desai Decl. at ¶ 4.) Claims arising after April 1, 2008 (when the Avaya telephone system was fully operational) were reduced to a nominal amount.[5] Ultimately, each Settlement Plaintiff's pro rata share of the net settlement amount was calculated by dividing his or her total damages calculated using Plaintiffs' formula by the sum of all Settlement Plaintiffs' estimated damages. *(Id.)* The Final Settlement Allocations are attached as Exhibit 1, filed under seal.

III. NOTICE OF SETTLEMENT

Included in the settlement was a total of 843 FLSA Plaintiffs, 573 FLSA and Rule 23 Plaintiffs, and 1,393 Rule 23 class members (collectively, "Settlement Class members"). Following the Court's June 6, 2012 order granting preliminary approval, Class Counsel mailed the Court-approved Class Notices ("Notices") to the Settlement Class members on June 13, 2012. (Desai Decl. at ¶ 5.)

Over the course of the notice period, Class Counsel promptly searched for alternate addresses and re-mailed the Notices to any Notices returned to Class Counsel as undeliverable. (*Id.* at ¶ 6.) Class Counsel used its best efforts to ensure a response to the Notices from each Settlement Class member. *(Id.)* Class Counsel, for example, re-mailed the Notices and Claim forms to each Settlement Class member who had not yet responded to the Notice on July 23, 2012 and again on August 17, 2012. *(Id.)* Further,

[5] Between December 2006 and September 2007, Qwest implemented "Start of Tour Huddles" which provided Consultants with a paid 5 minutes specifically for computer and application log on. Beginning in 2007, Qwest Corporation implemented a phone system manufactured by Avaya, which was integrated into the Consultants' computers. Qwest Corporation made Avaya auto launch after the computer ran its log-on scripts. Once a Consultant was logged in to Avaya, the time was reported in Total View. Consultants continued to be paid for five minutes specifically for computer and application log-on time.

Class Counsel telephoned non-responding Settlement Class members to remind them of the August 27, 2012 deadline to respond and emailed them several times during the 75-day claims period. *(Id.)*

IV. REACTION OF THE SETTLEMENT CLASS MEMBERS

The Notices provided Settlement Class members information on their right to object to or exclude themselves from the settlement.[6] (ECF No. 507 at 45-71.) The Notices also informed Settlement Class members that any objections or requests for exclusion were to be postmarked on or before the end of the notice period—August 27, 2012. (*Id.*) Of the 1,416 FLSA and FLSA/Rule 23 Class members, 1,326 accepted their settlement offers (94%), 90 did not respond, and none rejected. Of the 1,393 Rule 23 Settlement Class members, 872 accepted their settlement offers (64%), 518 did not respond to the Notice, and three opted out.[7] No Settlement Class member objected to the settlement. (*Id.*) Exhibit 2 identifies the individuals who opted out of the settlement, whose statute of limitations will be tolled for 60 days.[8]

[6] Before mailing the Notices, the Parties made minor revisions to the Notices attached to the Settlement Agreement to comply with the Preliminary Approval Order.

[7] Class Counsel received seven (7) claim forms after the August 27, 2012 deadline as of August 31, 2012 at 1:00 p.m. Plaintiffs wish to include these individuals in the settlement. Qwest will not object to their inclusion in the settlement only if the Court does not allow any potential late filed objections to the settlement to be presented.

[8] The Parties also request dismissal with prejudice of the claims of the Non-Qualified Plaintiffs who filed written consents to be party plaintiffs in the FLSA class listed in Exhibit 1 to the Proposed Order and as Exhibit I to the Settlement Agreement, ECF 507 at pp. 89-97. Non-Qualified Plaintiffs are individuals who the Parties agreed prior to filing their Joint Motion for Preliminary Settlement Approval are not eligible, and therefore, not included in the classes or collective action.

V. PROPOSED DISTRIBUTION FROM SETTLEMENT FUND

Should the Court grant final approval of the Settlement Agreement, Qwest Corporation will send Class Counsel the settlement checks for all Accepting FLSA Plaintiffs and Accepting Rule 23 Plaintiffs (collectively, "Accepting Settlement Class members") 30 calendar days after the latest of (1) the Effective Date[9], or (2) the date Class Counsel provides the Final Allocation List of allocated Individual Settlement Sums for Accepting Settlement Class members. (*Id.* at Section II.B.5, II.C.1.a.) Class Counsel will then promptly send the settlement checks to Accepting Settlement Class Members, who will have 120 calendar days to cash their checks. (*Id.*) Qwest's Counsel will provide Class Counsel with a list of Accepting Settlement Class members who have not cashed their checks 75 and 100 calendar days into the 120-calendar day period to cash checks, so that Class Counsel can contact these individuals. (*Id.*)

Unclaimed amounts in the Total Settlement Fund will be paid to a Court-approved *cy pres* fund after the 120-day period to cash checks, except that payments to rejecting FLSA Plaintiffs (who will not release any claims) will be subtracted from the Total Settlement Fund. [10] (*Id.* at Section II.C.1.a.)

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[9] "Effective Date" means the date on which the Settlement Approval Order and Judgment become final, meaning (a) if any appeal is filed, the date following the date after all appeals or other rights of review have been exhausted, and the Settlement Approval Order and Judgment has not been vacated, reversed, or modified, or (b) if no appeal is filed, the expiration date of the time for the filing or noticing of any such appeal. (Redacted Settlement Agreement, ECF No. 507, Section II.A.11.)

[10] With respect to certain Settlement Class members who also performed duties as union stewards, their allocation calculations were revised to account for paid time spent performing union activities, which was originally excluded from the calculation. This

The *cy pres* fund amount is currently approximately $222,700. The Parties have agreed to designate three organizations as the *Cy Pres* Beneficiaries, each receiving an equal share of the *cy pres* fund. These organizations are (1) Minnesota Justice Foundation, (2) Volunteer Lawyers Network, and (3) Iraq and Afghanistan Veterans of America: The "Combat to Career" program. The Parties request approval of these proposed Cy Pres Beneficiaries through this motion.

ARGUMENT

I. FINAL APPROVAL OF THE SETTLEMENT IS APPROPRIATE

A. Class Action Approval Process

Fed. R. Civ. P. 23(e)(2) permits the Court to approve a class action settlement "only after a hearing and on finding that it is fair, reasonable and adequate." The review and approval of a proposed class action settlement is within the broad discretion of the Court. *See Grunin v. Int'l House of Pancakes*, 513 F.2d 114, 123 (8th Cir. 1975) (stating that the decision to approve a settlement agreement "is commited to the sound discretion of the trial judge"). In determining whether the proposed settlement is "fair, reasonable and adequate" the Court should consider the following factors:

(1) the merits of the plaintiffs' case, weighed against the terms of the settlement;

(2) the defendant's financial condition;

adjustment affected 78 Settlement Class members' allocations who are participating in the settlement. The total increase in settlement payments for these individuals is $18,927.44 total, and the Parties agreed that this amount will be paid from the contingency fund and unclaimed funds.

(3) the complexity and expense of further litigation; and

(4) the amount of opposition to the settlement.

In re: UnitedHealth Group Inc. S'holder Derivative Litig., 631 F. Supp. 2d 1151, 1156 (D. Minn. 2009) (*citing In re Wireless Tel. Cost Recovery Fees Litig.*, 396 F.3d 922, 932 (8th Cir. 2005)); *see also Grunin*, 513 F.2d 114, 124 (8th Cir. 1975).

The Eighth Circuit Court of Appeals has acknowledged that the most significant factor is "the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement." *United Health Group Inc.*, 631 F. Supp. 2d at 1156 (*quoting In re Wireless Tel. Cost Recovery Fees Litig.*, 396 F.3d 922, 932 (8th Cir. 2005)); *see also Grunin*, 513 F.2d 114, 124 (8th Cir. 1975) (citiations ommited).

Additionally, courts may consider procedural fairness in order to confirm that the settlement was not the result of fraud or collusion. *Id.* In evaluating procedural fairness, courts may take into consideration the experience and opinions of counsel; the timing of the settlement, including the amount of discovery completed (so as to fully inform the parties as to the merits of their case); whether the settlement was a product of arm's-length negotiations; and whether a skilled mediator participated. *Id.* The Parties agree that after a thorough review of the record, it is clear that each condition listed below weighs in favor of final approval.

1. The Merits Of Plaintiffs' Case, Weighed Against The Terms of The Settlement

The Parties' arguments as to this factor and the facts upon which they are based hold true now, as they did at the preliminary approval stage. The Proposed Settlement arises out of a lawsuit alleging that Qwest failed to compensate Plaintiffs for their booting up and shutting down work activities performed pre- and post-shift in violation of the FLSA and state law.

Qwest denies that Plaintiffs worked unpaid overtime or otherwise worked off-the-clock. It denies that it suffered or permitted any unpaid work and denies knowledge of any such work. It otherwise denies any and all wrongdoing alleged by Plaintiffs or otherwise. Understanding the expense and risks inherent in continued litigation, Qwest believes the terms of the settlement are fair and that settlement of Plaintiffs' claims is in their best interest.

Plaintiffs believe that the claims asserted in the Litigation have merit and that the evidence developed to date supports the claims. Plaintiffs and their counsel recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Litigation through trial and through appeals. They have taken into account the uncertain outcome and risk of any litigation, especially in multi-party actions such as this Litigation, as well as the difficulties and delays inherent in such litigation. Plaintiffs and their counsel also are mindful of potential challenges to prevailing on the claims asserted in the Litigation.

Class Counsel has conducted a thorough investigation into the facts of the action, including an extensive review of voluminous documents, written discovery and depositions, and diligently have pursued an investigation of Plaintiffs' claims against Qwest. Based on their own independent investigation and evaluation, Class Counsel is of the opinion that the settlement with Qwest for the consideration and on the terms set forth in the Settlement Agreement is fair, reasonable, adequate, and in the best interest of the Plaintiffs in light of all known facts and circumstances, including the risk of significant delay, the defenses asserted by Qwest, the changes made by Qwest Corporation regarding its computer and telephone systems and time recording practices, as well as its efforts to enhance understanding and enforcement of its policy prohibiting off-the-clock work, as detailed below, and Class Counsel is cognizant of Qwest's arguments that: the alleged unpaid time at issue in this case was not reported to Qwest by Plaintiffs, notwithstanding Qwest Corporation's express policy requiring accurate time reporting; Qwest Corporation has paid for all overtime reported by Plaintiffs; the vast majority of Plaintiffs' claims are based on Plaintiffs' own retrospective estimates, without accompanying contemporaneous documentation; Qwest did not act willfully for purposes of liability under the FLSA; and that this case was improperly certified under Section 216(b) of the FLSA and Rule 23 or its equivalent in each of the states in which class action claims have been asserted.

Qwest Corporation asserts that it has taken the following steps to enhance enforcement of its policy prohibiting off-the-clock work and to strengthen existing protections against the possibility of unreported work:

a. In 2004, Qwest Corporation implemented an Off-the-Clock Policy.

b. In 2008, Qwest Corporation updated its Off-the-Clock Policy.

c. Qwest Corporation's and/or the corporate Code of Conduct states that the company is committed to full, fair, honest and accurate disclosure and record-keeping, and that there should be no falsifying time reporting.

d. Qwest Corporation's and/or the corporate Code of Conduct further states that employees who observe or suspect a violation of the law, the Code, or company policies or procedures, must report it to the appropriate person/department internally (e.g., a manager), or contact the corporate advice line/integrity line.

e. Qwest Corporation's and/or the corporate Code of Conduct also provides that retaliation against any individual who, in good faith, seeks advice, raises a concern or reports misconduct will be investigated and will not be tolerated.

f. In 2008, Qwest Corporation supplemented its Code of Conduct to increase visibility of its policy prohibiting off-the-clock work and require accurate reporting of all time worked.

g. Since 2008, Qwest Corporation's and/or the corporate annual training has included training on the Code of Conduct including policies prohibiting off-the-clock work and requiring accurate reporting of all time worked.

h. Qwest Corporation's Collective Bargaining Agreement ("CBA") with the Communication Workers of America has consistently provided for the payment of overtime of at least one and a half times their regular rate for hours worked in excess of 40 hours per workweek. [2003 CBA §§ 4.4, 4.5; 2005 CBA §§ 4.4, 4.5; 2008 CBA §§ 4.4, 4.5]

i. The CBA provides for the payment of overtime in situations that FLSA does not require the payment of overtime. Specifically, Qwest Corporation paid, and continues to pay, time and a half for time worked "in excess of the employee's scheduled tour for that particular day;" and "all actual work time on Sunday." [2003 CBA §§ 4.3 and 4.7; 2005 CBA §§ 4.3 and 4.7; 2008 CBA §§ 4.3 and 4.7] In addition, Qwest Corporation paid, and continues to pay, double time for time worked "after working forty-nine hours in a calendar week." [2003 CBA § 4.5; 2005 CBA §4.5; 2008 CBA § 4.5]

j. The CBA provides grievance procedures to address violations of the CBA, such as a failure to pay all wages due. [2003 CBA, Article 16; 2005 CBA, Article 16; 2008 CBA Article 16]

k. In December 2005, Qwest Corporation's legal department conducted training for managers regarding "The FLSA and the Qwest Off the Clock Policy." This training was held by an attorney and covered all

Coaches, Team Leads, and Directors in Qwest Corporation's call centers. The training discussed the importance of not allowing employees to work before they clock in or after they clock out as well as the importance of not allowing work during lunch or breaks.

l. Since 2005, Qwest Corporation has regularly trained its managers to prohibit Sales Consultants and Sales and Service Consultants (collectively, "Consultants") from performing any unpaid work before or after the start of their shift.

m. Beginning in 2006, Qwest Corporation implemented Start of Tour Huddles where Qwest Corporation provided a paid five minutes specifically for computer and application log on.

n. Since 2007, applicable Qwest Corporation office policies and procedures have provided:

  i. Work is not to be conducted before or after your scheduled tour or during breaks (includes lunch).

  ii. Lunch must be taken away from your desk and off of the production floor.

  iii. Breaks must be taken away from your desk and off the production floor.

  iv. Log on to your phone at the scheduled start of your tour or overtime, whichever comes first. The employee should do this before doing anything else or logging into any other system. The employee should not perform any work functions prior to the start of their tour.

o. Beginning in 2007, Qwest Corporation implemented a phone system manufactured by Avaya ("Avaya"), which was integrated into the computer. Qwest Corporation made Avaya auto launch after the computer ran its log-on scripts. Once a Consultant was logged in to Avaya, the time was reported in Total View. Consultants continued to be paid for five minutes specifically for computer and application log-on time.

p. In 2008, Qwest Corporation updated its Office Policies and Procedures to include a summary of the Off The Clock Policy, stating "Work functions shall not be done prior to the start of your schedule or during scheduled off periods like lunches or breaks. All time worked must be accounted for and paid. Failure to code time worked correctly will be considered a violation of our corporate policy. We have designated break areas for before shifts, breaks, & lunches. You may not be at your desk and must not be in a work area before the start of your shift, during a lunch or break, or after your shift."

q. In June 2009, Qwest Corporation implemented a sign off for payroll records stating that "My timecard is complete & accurate; it includes all time that I have worked, including overtime, regardless of whether authorized. I have taken all meal & break periods; unless otherwise shown on my timecard. I have addressed any questions I have with my supervisor or RAS manager."

r. Consultants are instructed that the last thing they are to do for the day is report any overtime.

In light of all of the foregoing, Plaintiffs and their counsel believe that the Settlement Agreement confers substantial benefits upon them. Based upon their evaluation, they have determined that the settlement set forth in this Settlement Agreement is in their best interests. The FLSA Plaintiffs and Rule 23 Plaintiffs were represented by experienced counsel, who believe that the settlement is fair, reasonable and adequate. (Desai Decl. at ¶ 8.)

Indeed, the terms of the settlement are fair and reasonable. The settlement fund will be distributed fairly among the FLSA and Rule 23 Plaintiffs who desire to take part in the settlement. Accepting Settlement Class members will receive a pro rata share of the settlement based on damages calculated from his or her data. Unclaimed amounts in the Total Settlement Fund will be paid to the Court-approved *Cy Pres* Beneficiaries, upon Court approval, after the 120-day period to cash checks, except that payments to Rejecting FLSA Plaintiffs (who will not release any claims) will be subtracted from the

Total Settlement Fund. (Redacted Settlement Agreement, ECF No. 507, Section II.B.2.a, II.B.2.c.)

Finally, the release is appropriate and not overbroad. Settling Plaintiffs will release their state and federal wage and hour claims against Qwest up to and including the Effective Date of the Settlement Agreement.

2. Qwest's Financial Condition

There has been no indication that Qwest's current or future financial condition would prevent it from paying the agreed upon settlement amount, or that they would incur undue hardship as a consequence of the settlement. Therefore, this factor weighs in favor of approval.

3. The Complexity And Expense of Further Litigation

If this matter had continued, the Parties would have engaged in a costly and lengthy trial jury trial, in which both Parties risked losing, as well as likely appeals and post-trial motions. Rather than continue further down this litigation path, the proposed settlement confers a substantial and immediate benefit to the FLSA Plaintiffs and Rule 23 Plaintiffs.

4. The Amount of Opposition to the Settlement

The Parties have received **no** objections to the settlement. Not a single Settlement Class member has objected to the settlement amount, manner of distribution, terms, or to the proposed award of attorneys' fees, costs or the Named Plaintiff service payment. This factor, therefore, indisputably weighs in favor of final settlement approval.

5. The Proposed Settlement is a Result of Arm's-Length Negotiations Between Experience Counsel

The Parties have engaged in several arm's-length mediation sessions throughout this case, the last of which was facilitated by Magistrate Judge Boylan, and ultimately executed a Memorandum of Understanding on October 25, 2011. Even after execution of the Memorandum of Understanding, the Parties negotiated for several more months before reaching a final Settlement Agreement. Certainly, the product of these substantial and intensive negotiations was conducted at arm's-length and without collusion. *See, e.g., DeBoer v. Mellon Mortg. Co.*, 64 F.3d 1171, 1178 (8th Cir. 1995) (stating that "such multiple layers of scrutiny further militate in favor of settlement and against [Appellants'] claims for collusion" where Magistrate Judge with previous experience in the type of litigation at issue presided over settlement negotiations); *In re Employee Ben. Plans Sec. Litig.*, No. 3-92-708, 1993 WL 330595, at *5 (D. Minn. June 2, 1993) ("intensive and contentious negotiations likely result in meritorious settlements, rather than collusive ones").

CONCLUSION

The Parties respectfully request that the Court grant their motion for final approval of the settlement and (1) finally approve the Settlement Agreement; (2) approve the Final Plan of Allocation of the Settlement; (3) dismiss all of the Settling Plaintiffs' and Non-Responding FLSA Plaintiffs' claims in the Litigation with prejudice and without further costs; (4) dismiss without prejudice the claims of the Opt-Out Rule 23 Plaintiffs identified in Exhibit 2 to this Motion and to the Proposed Order, tolling the statute of limitations applicable to such claims for 60 days following the date the Settlement Approval Order and Judgment are entered; (5) dismiss with prejudice the claims of the Non-Qualified Plaintiffs, listed in Exhibit I to the Settlement Agreement and as Exhibit 1 to the Proposed Order, who filed written consents to be party plaintiffs in the FLSA collective action but whom the Parties agree do not have timely claims; (6) bar and permanently enjoin all Settling Plaintiffs from asserting against any Released Party all Released Claims and claims dismissed by the Court with prejudice; and (7) approve Minnesota Justice Foundation, Volunteer Lawyers Network, and Iraq and Afghanistan Veterans of America: The "Combat to Career" program as the designated *Cy Pres* Beneficiaries, with each organization receiving an equal share of the *cy pres* funds.

Dated: August 31, 2012

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